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June 28, 2000

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: COMSAT Corporation
Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking To Access INTELSAT Directly (IB Docket No. 00-91)
Errata

Dear Ms. Salas:

By its undersigned attorney, COMSAT Corporation ("COMSAT") hereby submits erratum pages to correct certain errors that appeared in its Comments filed June 23, 2000, in the above-referenced docket. Specifically, the descriptions of the data sources underlying all visual aids and graphs (Figures 1 through 7) were inadvertently deleted from the Comments. In addition, the Comments contained several minor errors in the pagination of the Executive Summary, and on the Table of Contents.

In accordance with Sections 1.49 and 1.419 of the Commission's rules, this submission contains a corrected original Comments (except for the Appendices) and four complete copies of the corrected original. This submission does not contain copies of the Appendices to the original Comments, to which no corrections are intended.

Please date-stamp the attached duplicate upon receipt and return it via the messenger for our records. If any questions arise concerning this matter, kindly contact the undersigned.

Respectfully submitted,

Lawrence W. Secrest, III

Enclosures

Cc: Christopher Wright, Clint Odom, Bryan Tramont, Peter A. Tenhula, Mark Schneider, Adam Krinsky, Susan Steiman, Kathleen A. Campbell, James L. Ball, International Transcription Services, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
	)	
Availability of INTELSAT	)	IB Docket No. 00-91
Space Segment Capacity to	)	
Users and Service Providers	)	
Seeking to Access	)	
INTELSAT Directly	)	
	)	

To: The Commission

COMMENTS OF COMSAT CORPORATION

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June 23, 2000

EXECUTIVE SUMMARY

In a *Notice of Proposed Rulemaking* (*NPRM*) instituted pursuant to the ORBIT Act, the FCC has asked for comment on:

- whether U.S. carriers and users have a "sufficient opportunity" to obtain direct access to the INTELSAT satellite system; and, if not
- what, if any, government action would be "necessary" and "appropriate" to correct any such direct access problem.

As set forth below, the evidence demonstrates conclusively that there is no direct access "problem" which would foreclose users from gaining "sufficient opportunity" to use the INTELSAT system. Moreover, ORBIT imposes very specific limitations on the kinds of regulatory solutions that would be warranted should any such problems arise.

U.S. Users Have "Sufficient Opportunity" To Obtain Level 3 Direct Access To INTELSAT Space Segment Capacity.

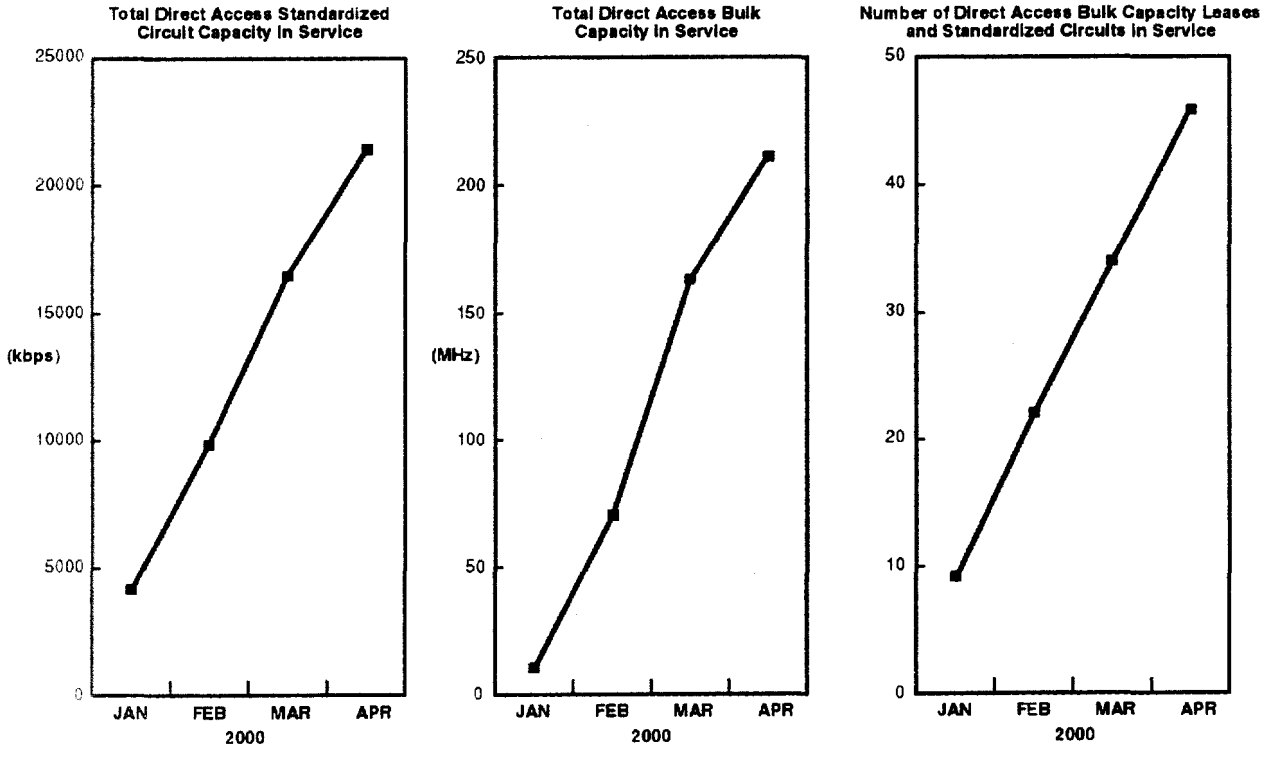
Under the ORBIT Act, the FCC must "determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements." 47 U.S.C. § 641(b). Clearly, they do. Since direct access was implemented in December 1999, many U.S. users have been able to take advantage of these opportunities.

Many U.S. Carriers and Users Already Have Obtained Space Segment Capacity Directly from INTELSAT. Although "direct access" in the U.S. is only six months old, at least eleven U.S. companies have already become direct access customers. Through April 2000 (the last month for which complete data is available), at least 49 different service orders have been

accommodated, including 23 orders for Bulk Capacity and 26 for Standardized Circuits. In addition, almost 10,000 minutes of occasional-use video transmissions were supplied by INTELSAT to U.S. direct access customers. In all, the total INTELSAT tariff value of U.S. direct access usage has grown by at least 60% each month. Figure 1 illustrates the month-by-month increase in direct access to INTELSAT since January, 2000.

Figure 1

U.S. Direct Access Is Increasing Steadily



Source: INTELSAT-Supplied Data

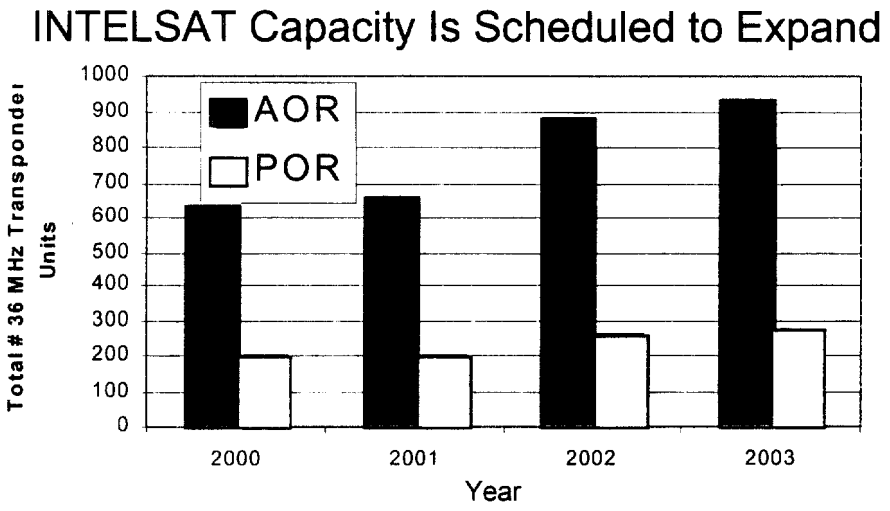
INTELSAT Currently Has Only a Small Amount of Unused Space Segment Capacity.

The steady increase in the amount of direct access demonstrates that there have been many opportunities for carriers and users to obtain space segment capacity directly from INTELSAT. At present, however, the level of direct access (as well as access by Signatories such as

COMSAT) is constrained by the shortage of available INTELSAT capacity. As a result of the explosive world-wide growth in popularity of the Internet, the demand for international satellite and fiber-optic cable capacity has temporarily outstripped supply. Over 80% of INTELSAT's existing capacity is currently in use, and some of the system's most desirable connectivities are all but sold out. For this reason – and this reason alone – INTELSAT has not been able to fulfill every U.S. service order it has received, either from COMSAT or from other direct access customers.

Direct Access Opportunities Will Increase as INTELSAT Deploys New Capacity and Commitments on Existing Capacity Expire. The availability of sufficient opportunities for direct access, however, is not a static process. In the near term, such opportunities will increase as current INTELSAT customers' lease commitments expire and existing capacity comes back on the market. At that point, the competition between COMSAT and INTELSAT envisioned by the *Direct Access Order* and ORBIT will ensure that users benefit. In the longer term, INTELSAT intends to launch by year-end 2003 seven new, higher-capacity satellites that will serve the overburdened Atlantic Ocean Region ("AOR"). At the same time, it will also increase Pacific Ocean Region ("POR") capacity by redeploying more advanced satellites to existing POR orbital locations. As illustrated in Figure 2, these new deployments will cure the current system capacity limitation and enhance considerably the opportunities for U.S. entities to obtain INTELSAT space segment directly.

Figure 2

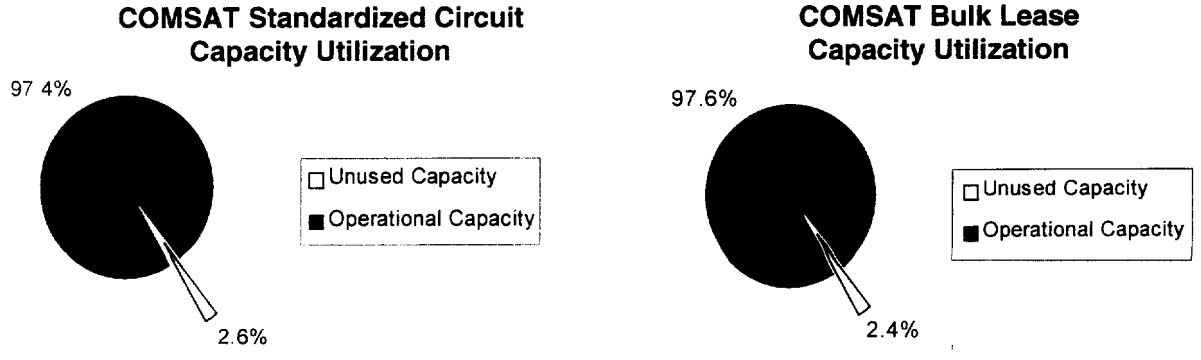


Source: INTELSAT Deployment Plan

COMSAT Does Not "Warehouse" Capacity That It Cannot Or Does Not Use. The *NPRM* seeks to determine whether COMSAT is "warehousing" capacity for which it has no near-term use. The evidence proves that COMSAT has not engaged in any such practices. In fact, as shown in Figure 3, more than 97% of COMSAT's INTELSAT capacity is currently being used by COMSAT's customers to provide service.

Figure 3

COMSAT Has Not Warehoused Capacity



Since the implementation of direct access on December 6, 1999, COMSAT has placed precisely 32 "guaranteed reservations" (*i.e.*, commitments to take or pay for certain specified INTELSAT capacity beginning on a date certain). A firm customer order lies behind *every one* of those 32 reservations. Moreover, during that same time, COMSAT did not place *even one* "first right of refusal" (FRR) reservation (*i.e.*, purchase option).

The absence of any "warehousing" problem can be further illustrated by taking a closer look at the two main ways in which INTELSAT capacity is packaged and marketed—*i.e.*, as "Standardized Circuits" or as "Bulk Capacity."

Standardized Circuits: Under INTELSAT's rules, COMSAT must pay for Standardized Circuits leased under long-term contracts, regardless of whether those Circuits are actually in service. COMSAT cannot afford to pay for "vaporware," and therefore must insist on retaining enough actual, in-service circuits to cover its commitments. For this reason, the company cannot relinquish individual Circuits for which it has already committed to pay.

In addition, under INTELSAT's ordering procedures, Standardized Circuits (which constitute roughly 30% of INTELSAT's U.S. capacity) *cannot* be reserved in advance. Accordingly, the *NPRM* fundamentally errs in its statement that "[t]he INTELSAT arrangements for capacity distribution to Signatories and direct access users provide a process through which INTELSAT capacity can be tied up well into the future, even before satellites are constructed and launched." *Id.* ¶ 15.

Bulk Capacity: Unlike Standardized Circuits, INTELSAT space segment capacity furnished to U.S. carriers and users as "Bulk Capacity" *can* be reserved in advance. Moreover, expiring Bulk Capacity leases may be renewed. However, COMSAT has never used

INTELSAT's Bulk Capacity reservation or renewal processes to "tie up" INTELSAT capacity or keep it away from other users.

As a matter of policy and practice, COMSAT generally does not reserve (or renew) Bulk Capacity without an underlying firm customer requirement. It is true that COMSAT holds an "automatic FRR" (*i.e.*, a renewal option) on each of its Bulk Capacity leases. But when those leases have been set to expire, COMSAT has always offered its customers an opportunity to renew. *Every time a customer has declined a renewal opportunity, COMSAT has voluntarily relinquished its automatic FRR if it was unsuccessful in obtaining a firm capacity commitment from another customer.* Thus, *in every instance* where COMSAT has renewed an INTELSAT lease, it has done so on behalf of a specific customer.

Moreover, even when COMSAT does not immediately relinquish its automatic FRR, a customer who wishes to obtain that capacity on a direct access basis from INTELSAT may "challenge" COMSAT for the capacity. When "challenged," COMSAT is not told whether the challenger is its existing customer, a new U.S. user, or another entity (*e.g.,* another INTELSAT Signatory seeking capacity on the same satellite). Nonetheless, COMSAT must respond either by relinquishing the "challenged" capacity or by agreeing to pay for it in full. Because COMSAT does not even know the identity of any challenger, claims that COMSAT can use (or has used) the challenge process or its Signatory role in a targeted way to "thwart" or "block" would-be direct access customers are simply not true.

In sum, the facts demonstrate that COMSAT has not constrained the availability of Bulk Capacity; it gains no competitive advantage from INTELSAT's reservation procedures; and the existence of the "automatic FRR" does not mean that users lack "sufficient opportunity" to obtain leased capacity on a direct access basis.

The Act's Requirements Must Be Understood in the Context of a "Rule of Reason." Statutes requiring private companies to provide others with access to their service or facilities are normally construed using a "rule of reason." Under that "rule of reason," the owner of the facilities is "only required to make services available *to the extent that such services are or can be made available with reasonable effort*"; and, even then, only "*subject to availability*." Congress was aware of this rule of statutory construction when it enacted ORBIT. Accordingly, it is clear that Congress did not equate ORBIT's phrase "sufficient opportunity" with an "absolute" or "unlimited" right to access on demand.

Even Assuming That Users Experience Genuine "Problems" In Obtaining Direct Access, ORBIT Imposes Specific Limitations on the Kinds of Regulatory "Solutions" That Would Be Warranted.

The Commission should foster commercial solutions before resorting to regulatory ones. COMSAT is in complete accord with the Commission's statement in the *NPRM* that "the first option" for resolving any hypothetical lack of sufficient direct access opportunities "should be commercial solutions between COMSAT and users and providers seeking to access INTELSAT directly through space segment capacity held or reserved by COMSAT." In fact, subsequent to the FCC's *Direct Access Order*, COMSAT successfully concluded commercial negotiations with its two largest customers (AT&T and MCI WorldCom) to extend their contracts for new and renewing Circuits. By renewing with COMSAT, these large carriers gained the economic "benefits of direct access" in the form of significant rate reductions and greater flexibility.

COMSAT's post-direct access contracts with AT&T and MCI WorldCom fully demonstrate the viability of such commercial resolution for access to INTELSAT space segment capacity. These mutually beneficial transactions demonstrates the accomplishment of one of the

FCC's primary goals for adopting direct access—*i.e.*, to foster competition between COMSAT and INTELSAT. Moreover, smaller customers have also benefited from the availability of direct access even when they have chosen to renew their leases with COMSAT. Since direct access was implemented, virtually every COMSAT customer that has renewed a Bulk Capacity lease has done so at a lower price. Accordingly, ORBIT's ultimate goals of increasing competition and lowering prices for end users are now being realized, even as customers have opted to renew their leases or contracts with COMSAT.

In implementing its direct access policy, the FCC and Congress wanted COMSAT to compete against INTELSAT. The fact that COMSAT has been able to retain customers for INTELSAT capacity in this new environment should not suggest that the capacity retained by COMSAT to serve those customers denies others sufficient opportunities for direct access. To the contrary, COMSAT's commercial undertakings under the direct access regime demonstrate that the market is working as Congress and the FCC hoped it would – and that regulatory intervention would be neither necessary nor appropriate.

Abrogation of contracts cannot constitute "appropriate action" under ORBIT. It would be entirely unprecedented and unwarranted for the Commission to abrogate contractual rights of a non-dominant carrier that (by definition) does not hold or exercise "market power." In the direct access context, this principle was expressly endorsed in ORBIT Section 641(c), which states that "nothing in the section shall be construed to permit the abrogation or modification of any contract." For the Commission to rely on any pre-existing authority to abrogate or modify COMSAT's contracts would render Section 641(c) a nullity. It would also violate Section 641(b), which requires the Commission to give full effect to the *intent* of Congress in implementing direct access.

Regulation of Intelsat L.L.C.'s post-privatization distribution arrangements would not constitute "appropriate action" under ORBIT. The ORBIT Act expressly provides that its direct access requirement is directed only to INTELSAT – and not to Intelsat L.L.C. (INTELSAT's post-privatization commercial "successor entity"). Indeed, the Act defines "INTELSAT" as an intergovernmental organization created by an international agreement. Intelsat L.L.C., in contrast, is a conventional U.S. business corporation, formed under the Corporate Code of the State of Delaware. Moreover, the concept of "Level 3 direct access" to Intelsat L.L.C. would be illogical. Post-privatization, the very concepts that define "direct access" (*i.e.*, "Signatory" versus "non-Signatory" status, "Level 3," etc.) all will have ceased to exist.

In addition, the Commission lacks any legal basis for imposing "direct access" on Intelsat L.L.C. Immediately upon INTELSAT's privatization, ORBIT will repeal Sections 102 and 201(c) of the Communications Satellite Act, upon which the Commission relied when it initially implemented direct access to INTELSAT (prior to passage of ORBIT). Accordingly, Intelsat L.L.C.'s post-privatization distribution arrangements cannot be singled out for special and unique regulatory burdens.

CONCLUSION

There is no evidence that users lack "sufficient opportunity" to obtain direct access. The Commission should recognize this fact and promptly conclude the instant proceeding.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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Users and Service Providers	)	
Seeking to Access	)	
INTELSAT Directly	)	
	)	

To: The Commission

COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT"),[1] by its attorneys, hereby submits comments in response to the Commission's *Notice of Proposed Rulemaking* ("*Capacity NPRM*") in the above-captioned proceeding.[2] The *Capacity NPRM* was issued pursuant to the requirements of the ORBIT Act. 47 U.S.C. § 641(b).

The ORBIT Act was enacted on March 17, 2000. *See* Pub. L. No. 106-180, 114 Stat. 28 (2000), *codified at* 47 U.S.C. §§ 601-81. It authorizes "direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT . . . at the level commonly referred to by INTELSAT, on the date of

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[1] References to "COMSAT" throughout these comments refer only to COMSAT World Systems ("CWS"), the business unit of COMSAT Corporation that, along with COMSAT's Satellite Systems Investment Management Unit, fulfills COMSAT's function as United States Signatory to INTELSAT. All data and representations contained herein apply only to CWS. Other COMSAT affiliates may use INTELSAT capacity as direct access customers. No data or representations contained herein pertain to such entities.

[2] *Notice of Proposed Rulemaking, In re Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, FCC 00-186, IB Docket No. 00-91 (rel. May 24, 2000) ("*Capacity NPRM*").

enactment of this title, as 'Level III.'" 47 U.S.C. § 641(a).[3] In so doing, ORBIT codified the Commission's earlier Order permitting Level III direct access in the United States effective December 6, 1999. *See generally Direct Access to the INTELSAT System*, 14 FCC Rcd 15703 (1999) ("*Direct Access Order*"). The ORBIT Act also directs the Commission to conduct the present proceeding "to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements." 47 U.S.C. § 641(b). If the Commission determines that such entities *do* have such "sufficient opportunity," its statutory duty under Section 641(b) is thereby fully discharged.

The Commission is directed to take remedial regulatory action only if it "determines that such opportunity to access does not exist." *Id.* ORBIT specifies that such action is warranted only where it is both "necessary" and "appropriate" to facilitate Level III direct access to INTELSAT. *Id.* To this end, ORBIT expressly identifies one potential Commission action as *not* "appropriate" for implementing direct access to INTELSAT: "Nothing in this section shall be construed to permit the abrogation or modification of any contract." *Id.* § 641(c).

I. The Evidence Demonstrates That Users Have "Sufficient Opportunity" To Obtain Level III Direct Access To INTELSAT Space Segment Capacity.

The principal purpose of this proceeding is "to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements." 47 U.S.C.

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[3] The statutory term "INTELSAT" refers to "the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT)." 47 U.S.C. § 681(a)(1). "INTELSAT is an IGO [Intergovernmental Organization] created to own and operate the first commercial global satellite system." *New Skies Satellites, N.V.*, 14 FCC Rcd 13003, ¶ 3 (1999).

§ 641(b). As discussed in Subpart I.D, *infra*, the phrase "sufficient opportunity" must be construed as a "rule of reason." So construed, as the data presented herein demonstrates, such entities *do* enjoy substantial opportunity to obtain INTELSAT space segment capacity directly from INTELSAT. Since direct access was implemented in December 1999, many U.S. users have been able to take advantage of these opportunities. Further, there is every reason to expect the trend toward direct access to continue as INTELSAT deploys more capacity and COMSAT's existing leases and contracts expire.

A. Many U.S. Carriers and Users Already Have Obtained Space Segment Capacity Directly From INTELSAT.

Although "direct access" in the U.S. is only six months old, the amount of direct access usage has increased steadily in terms of number of customers, number of invoice orders, and amount of capacity. *See* Figure 1, below.[4] The total INTELSAT tariff value of U.S. direct access usage has grown by at least 60% each month, and in April, 2000 alone such usage included 22 Bulk Capacity leases[5] and 24 Standardized Circuits.[6] At least 11 U.S. companies

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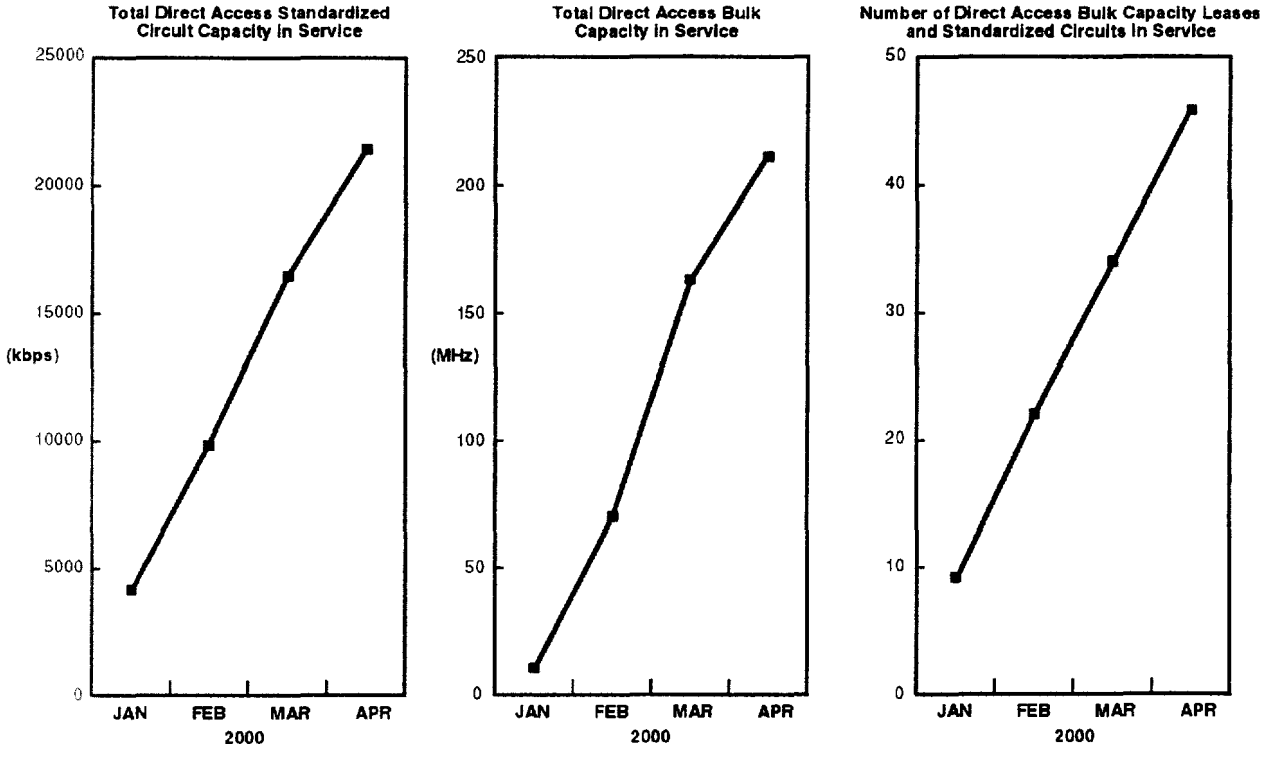
[4] Pursuant to a Commission request, COMSAT voluntarily modified its original direct access tariff, U.S. direct access users no longer provide COMSAT with contemporaneous order information regarding the type or amount of INTELSAT space segment capacity sought, either in connection with the FCC-approved surcharge collection procedures or otherwise. Instead, COMSAT now receives such information only from INTELSAT, and only after the capacity has been sold. Accordingly, while COMSAT's data from INTELSAT is substantially complete through April 2000, the figures cited above do not capture any U.S. direct access usage of INTELSAT space segment capacity that began after April 30, 2000. Nonetheless, the trend toward increased direct access usage of INTELSAT reflected in the data is clear.

[5] Bulk Capacity agreements (also called "transponder leases") essentially permit a customer to occupy a specified full or fractional transponder for a fixed period of time. Such leases are "tailored" to meet the requirements of individual customers, and may be reserved in advance. Bulk Capacity is sold in units of power and bandwidth (eirp and megahertz), and is used primarily for video, VSAT, broadband, and Internet services. *See also* Subpart I.D, *infra* (discussing Bulk Capacity agreements in detail).

have become direct access customers; one of them has acquired as many as 21 leases/circuits directly from INTELSAT. Through April 2000, at least 49 different individual service orders have been accommodated, including 23 orders for Bulk Capacity and 26 for Standardized Circuits. In addition, almost 10,000 minutes of occasional-use video transmissions were supplied by INTELSAT to U.S. direct access customers through April 2000.

FIGURE 1
DIRECT ACCESS USAGE IS INCREASING RAPIDLY



Source: INTELSAT-supplied data

Some current examples of U.S. direct access usage are as follows:

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[6] Standardized Circuits are capacity units that are purchased by common carrier customers to provide switched and private line service. Unlike Bulk Capacity, individual Standardized Circuits may not be reserved in advance (although INTELSAT does take carrier forecasts into account when it plans the Circuit portion of the INTELSAT system). Moreover, Standardized Circuits conform to standardized specifications, and are not "tailored" to suit individual customer needs. Standardized Circuits are measured in terms of throughput (kilobits and megabits per second).

- one major U.S. retail carrier has obtained two five-year capacity leases; 19 one-year standardized circuits; and 1,520 minutes of occasional-use video capacity;

- another U.S. carrier has obtained one five-year capacity lease; two three-year capacity leases; one one-year capacity lease; one short-term capacity lease; and three one-year standardized circuits;

- another U.S. carrier has obtained two five-year capacity leases and two short-term standardized circuits; and has also begun to obtain occasional-use video capacity;

- another U.S. company has obtained two three-year capacity leases and two one-year capacity leases;

- another U.S. company has obtained one ten-year capacity lease; one six-year capacity lease; and two three-year capacity leases;

- another U.S. company has obtained one 2.5-year capacity lease;

- another U.S. company has obtained one one-year capacity lease;

- another U.S. company has obtained one six-month capacity lease;

- another U.S. company has obtained two one-year standardized circuits;

- one U.S. subsidiary of a foreign Signatory has obtained one two-month capacity lease; one short-term capacity lease; and 3,560 minutes of occasional use video capacity;

- another U.S. subsidiary of a foreign Signatory has obtained one two-year capacity lease and 3,865 minutes of occasional use video capacity.

Plainly, the fact that so many U.S. carriers and users have already become direct INTELSAT customers provides compelling evidence that there *is* a reasonable ability to obtain such space segment capacity directly.

B. INTELSAT Currently Has Only A Small Amount of Available Space Segment Capacity.

As discussed in Subpart I.A, *supra*, many U.S. carriers and users are already obtaining INTELSAT space segment capacity directly from INTELSAT. That does not mean, however, that INTELSAT has been able to fill every order for direct access service. While COMSAT has no way of knowing how many direct access orders have not been accommodated, it *is* aware that

several of its own service inquiries have not been accommodated due to lack of capacity on the system. Table 1, below, illustrates COMSAT's service requirements that INTELSAT has been unable to accommodate due to capacity constraints, since the implementation of direct access.

TABLE 1
SUMMARY OF COMSAT SERVICES THAT COULD NOT BE ACCOMMODATED BY INTELSAT DUE TO CAPACITY CONSTRAINTS (DEC 6, 1999-MAY 2000)

Customer	Bandwidth (MHz)	Ocean Region[7]	Service	Timeframe
Customer A	2 x 36 MHz	POR	Internet lease	4Q99
	36 MHz	POR	Internet lease	4Q99
	4 x 36 MHz	AOR	Internet lease	1Q00
	36 MHz	AOR	Internet lease	1Q00
	2 x 36 MHz	AOR	Internet lease	1Q00
Customer B	4 x 36 MHz	AOR	Internet lease	4Q99
	8 Mb, 2 Mb, 27.2 MHz	AOR	Internet	1Q00
	2 Mb	AOR	IBS	1Q00
	1 Mb	AOR	IBS	1Q00
	2x2 MB, 27.2 MHz	POR	Internet	1Q00
	6 Mb	AOR	Internet	1Q00
	3x2 Mb	AOR	Internet	1Q00
	3x2 Mb	AOR	Internet	1Q00
	2 Mb	AOR	IBS	1Q00
	1.5 Mb, 2 Mb, 27.2 MHz	AOR	IBS	1Q00
Customer C	27.2 MHz	AOR	Internet Lease	1Q00
	2 x 27.2 MHz	AOR	Internet Lease	1Q00
Customer D	2 x 27.2 MHz	AOR	Internet Lease	3Q00
Customer E	36 MHz, 27.2 MHz, 6 MHz	AOR	Internet lease	2Q00
Customer F	36 MHz	POR	Internet lease	2Q00
Customer G	27.2 MHz	POR	Internet Lease	2Q00
Customer H	36 Mhz	AOR	Internet Lease	2Q00
Customer I	36 MHz	POR	Internet Lease	2Q00
Customer J	36 MHz	POR	Internet Lease	2Q00
Customer K	36 MHz	POR	Internet Lease	2Q00
Customer L	2 x 36 MHz	POR	Internet Lease	3Q00
Customer M	36 MHz	POR	Wideband Mobile	
	15 MHz	AOR	Internet Lease	3Q00
Customer N	2 x 27.2 MHz	AOR	Internet Lease	1Q00
	27.2 MHz	AOR	Internet Lease	2Q00
	27.2 MHz	AOR	Internet Lease	2Q00
	27.2 MHz	AOR	Internet Lease	2Q00

[7] The specific connectivities requested are competitively sensitive and are not shown in this table.

COMSAT has also received other inquiries from existing and prospective customers for capacity to particular countries. However, many customers are aware that capacity to these countries is so limited that they do not even attempt to pursue these requirements.

The fact that INTELSAT has been able to fill only some—but not all—orders tendered by Signatory and direct access customers does not mean, however, that either type of user has been deprived of a reasonable opportunity to obtain INTELSAT capacity directly.[8] Rather, this fact simply illustrates that INTELSAT does not possess an unlimited supply of space segment capacity that can serve the U.S.

Today, nearly 80% of the INTELSAT transponders that can access the U.S. are in operational use serving customer demand.[9] The remaining 20% are available for U.S. users, but less than half of them (*i.e.*, only 8% of the total) are in high demand from a U.S. customer requirements perspective,[10] and some of the most desirable connectivities are completely sold out. *See* Figure 2 below. Moreover, some of the capacity that is located in high-demand connectivities is fragmented over numerous transponders, and thus is not useful to users with

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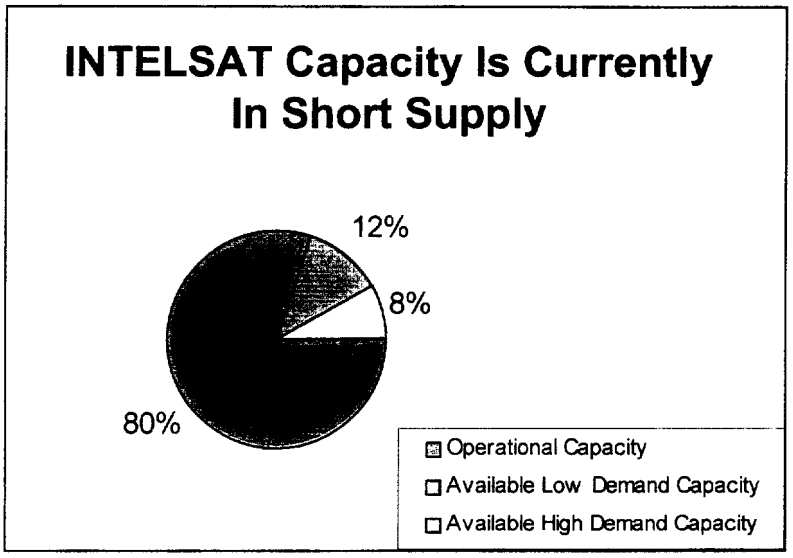
[8] ORBIT calls only for a "sufficient opportunity to access INTELSAT space segment capacity," 47 U.S.C. § 641(b)—not an absolute guarantee that unlimited capacity will be available on demand.

[9] A few transponders are unusable due to certain system constraints. These constraints are generally attributable to intersystem coordination restrictions or a failed subsystem on the satellite.

[10] For example, most Internet traffic is asymmetric, with high traffic volumes outbound from the U.S. and much lower volumes inbound. Thus, U.S.-outbound capacity is in much greater demand than U.S.-inbound capacity.

higher bandwidth needs. Complete information as to availability on specific connectivities is contained in Confidential Attachment A.[11]

Figure 2



Source: Derived From INTELSAT Business Network (IBN) Data

This shortage of space segment capacity is not unique to INTELSAT. Rather, it mirrors similar shortages that are being experienced by the many satellite and undersea fiber cable operators that are INTELSAT's facilities-based competitors.[12] These shortages are primarily a product of the massive recent increase in demand for international transmission capacity that has

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[11] As the *Capacity NPRM* recommended, at ¶ 22, COMSAT is seeking confidentiality for this information at the request of INTELSAT. COMSAT agrees that this information is competitively sensitive.

[12] *See, e.g., SIA/Futron Study Predicts Rising Industry Growth In 2000, Fueled By DBS, Broadband*, Satellite News, Vol. 23, No. 25 (June 19, 2000) (discussing the shortages that have resulted from explosive growth in consumer demand and also to "delays in the number of satellites built and launched during 1999").

accompanied explosive world-wide growth in Internet usage.[13] Because neither a satellite space station nor a transoceanic submarine cable can be financed, constructed, and deployed overnight, this sudden increase in global demand has temporarily outstripped the supply of international transmission capacity.[14]

In considering the significance of this supply shortfall, it is important to keep in mind that INTELSAT capacity accounts for only a minor fraction of the total international transmission capacity now available to U.S. carriers and users. Moreover, unlike access to local exchange carrier facilities, access to INTELSAT capacity is not essential to originate or terminate user messages; users have numerous alternatives. INTELSAT faces intense facilities-based competition for the provision of global communications services from other geostationary satellite companies.[15] Indeed, as Figure 3 illustrates, of the more than 60 geostationary

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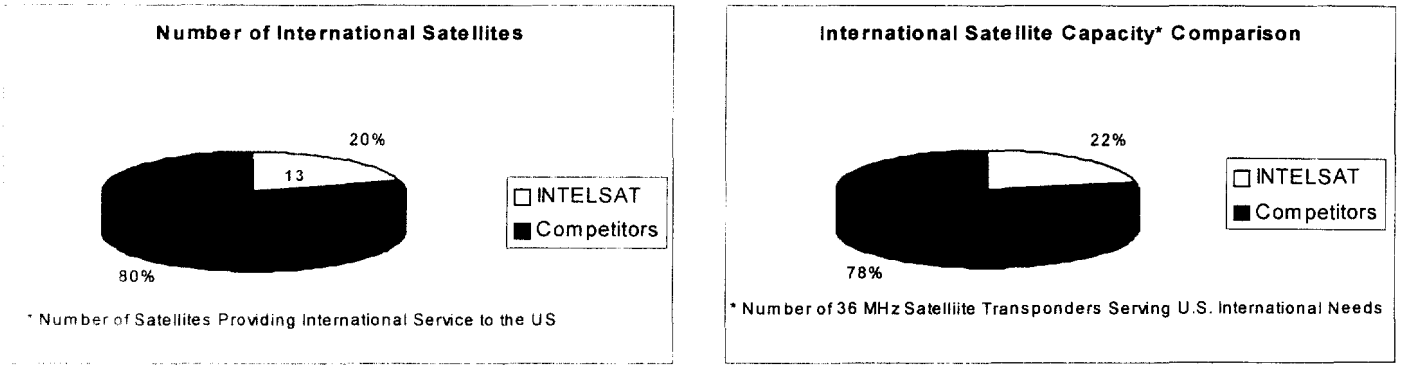
[13] *See, e.g.*, Jason Oxman, FCC Office of Plans and Policy, *The FCC and the Unregulation of the Internet*, 1999 FCC LEXIS 3370 (July 1999), *available online at* <http://www.fcc.gov/opp/workingp.html>. ("The growth of the Internet is nothing short of explosive, driven by the invention in this decade of the World Wide Web, which gives consumers a user-friendly platform from which to access content in the online world."); *Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, 13 FCC Rcd 18025, ¶ 153 n. 420 (1998) (noting that "the growth in Internet traffic is currently doubling approximately every six months," and that, accordingly, "the demand for Internet [transmission] services more than doubles every year").

[14] Because INTELSAT does not pay U.S. taxes, the Commission itself has recognized that the price INTELSAT can charge U.S. users (even with the Signatory surcharge) gives it an advantage over COMSAT. This distortion may actually have exacerbated INTELSAT's current capacity shortage by stimulating demand due to below-cost pricing. *See Direct Access Order*, ¶¶ 106, 114-15.

[15] *See COMSAT Corp., Forbearance from Dominant Carrier Regulation*, 13 FCC Rcd 14083, 14096 (1998) ("*COMSAT Non-Dominance Order*") (recognizing that "other satellite companies effectively compete against [INTELSAT]" in virtually all services in most of the international markets), *modified, Policies and Rules For Alternative Incentive Based Regulation of COMSAT Corp.*, 14 FCC Rcd 3065 (1999).

communications satellites that currently serve United States international traffic needs, INTELSAT owns only 13 (less than one quarter).[16]

FIGURE 3
INTELSAT PROVIDES ONLY A SMALL FRACTION OF THE INTERNATIONAL SATELLITE CAPACITY SERVING THE U.S.



Sources: *Phillips Satellite Industry Directory* (22d ed. 2000) and Satellite Company Web Sites

Moreover, as Figure 4 illustrates, and as the Commission itself has recognized, transoceanic submarine fiber optic cables also are highly substitutable competitive alternatives to INTELSAT.[17]

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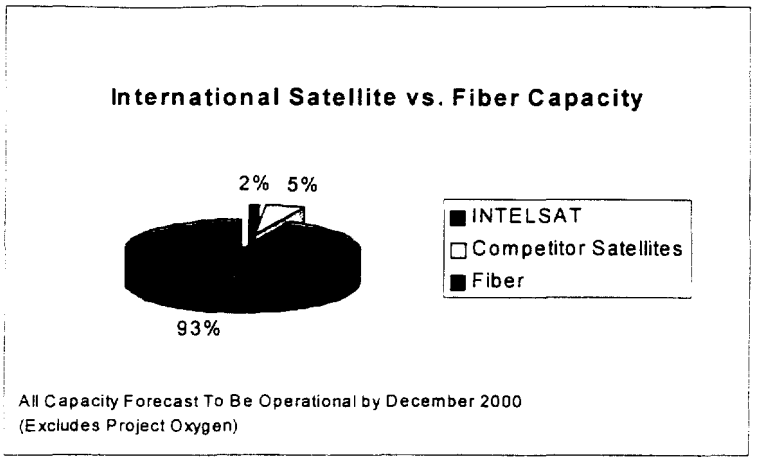
[16] *Phillips Satellite Industry Directory* (22d ed. 2000) (setting forth complete information about each of these satellites and their operators). The remaining satellites are owned by strong U.S. competitors such as Hughes/PanAmSat, Loral Skynet/Telstar/Orion and GE American Communications. *Id.*

[17] *COMSAT Non-Dominance Order*, ¶ 32; *see also Direct Access Order*, ¶ 124 (acknowledging that INTELSAT's "relatively low [15] percent market share [of switched voice and private line traffic to and from the United States] suggests that long-term contracts have not acted as a barrier to further competition through fiber optic cable and satellite alternatives").

FIGURE 4
INTELSAT PROVIDES ONLY A TINY FRACTION OF THE INTERNATIONAL TRANSMISSION CAPACITY SERVING THE U.S.[18]



To meet increased demand, many of these satellite and cable competitors will deploy new transmission facilities during the next few years. And so will INTELSAT. As detailed in Table 1, *infra*, INTELSAT or its private successor entity Intelsat L.L.C. intends to launch nine new, higher-capacity satellites by 2003. Seven of these will serve the overburdened Atlantic Ocean Region ("AOR").[19] In addition, Pacific Ocean Region ("POR") capacity (which also serves the United States) will also soon be increased by the redeployment of more advanced satellites to one or more existing POR orbital locations. These new deployments will enhance considerably the

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[18] The data presented in Figure 4 were derived from several sources including: *Phillips Satellite Industry Directory* (22d ed. 2000), *The Satellite Encyclopedia* (1999 ed.), filed FCC applications, SATCO DX, KMI Corporation, trade press sources, company press releases, and company Web Pages.

[19] Specifically, the INTELSAT 903, INTELSAT 904, INTELSAT 905, INTELSAT 906, INTELSAT 907, INTELSAT 10-1, and INTELSAT 10-2 are planned to serve the Atlantic Ocean Region. The INTELSAT 901 and INTELSAT 902 are planned to serve the Indian Ocean Region. The ultimate locations of these satellites could vary, based upon revisions to the deployment plan.

opportunities for U.S. entities to obtain INTELSAT or Intelsat L.L.C. space segment capacity directly. *See* Figure 5, below.

Specifically, between the first quarter of 2001 and the third quarter of 2002, INTELSAT is scheduled to deploy a series of seven new INTELSAT IX satellites, five of which will directly replace the INTELSAT VI satellites that are coming to the end of their station-kept life. The other two satellites in the INTELSAT IX series will replace two other AOR satellites (INTELSAT 801 and INTELSAT 705), freeing those satellites up to serve new roles, one in the AOR at 330.5° E.L. and one in the POR at 178° E.L. Upon the arrival of the INTELSAT IXs, four of the existing INTELSAT VI satellites (601, 602, 603, and 604) will be redeployed to serve in inclined orbit roles within the system. Of these four, two satellites (602 and 604) will be de-orbited in 2003. The fifth VI, INTELSAT 605, will be redeployed to a new role (340° E.L.) in the AOR. INTELSAT is also engaged in a construction project to build two additional satellites, referred to as the Alpha-1 and Alpha-2. These role-specific satellites will be available for service in the AOR in the first half of 2003. They will replace INTELSAT 707 at 359° E.L. and INTELSAT 709 at 310° E.L. The plan calls for INTELSAT 709 to be redeployed to the APR at 157° E.L. ,and for INTELSAT 707 to be redeployed to the POR at 180° E.L.

All INTELSAT VI traffic that has an expiration date extending into the period of planned INTELSAT IX deployment will be served by the new IXs. Since current traffic is entitled to renewal to maintain service continuity, for the purpose of discussing new capacity on the system, a worst case assumption can be made that all current INTELSAT VI capacity will be occupied on the new INTELSAT IX satellites. Figure 5 shows all station-kept capacity in the AOR and POR in the INTELSAT system, and the growth planned for the next three years. Where the